

FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance may be provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I."

Campaign

Steve Fechner
City of Torrance
Dated: December 2, 2003
File Number I-03-263

A general discussion of Commission rules for aggregating contributions among a business entity, the joint owners of the business entity, and among their spouses.

David R. Zamora
San Bernardino County Board of Supervisors
Dated: December 5, 2003
File Number A-03-267

This candidate for the board of supervisors was advised that office space donated for campaign use would be reported as a non-monetary contri-

bution and valued at the current market rate for similar commercial office space.

Ann D'Amato
Los Angeles Office of the City Attorney
Dated: December 8, 2003
File Number A-03-268

The Los Angeles Office of the City Attorney has been approached by an independent production company to cooperate in a television program which would follow participants in the city's informal, non-judicial criminal hearings program. The producers will compensate the city for all costs associated with the production and will also pay actual production costs, including renting facilities, hiring personnel and producing finished episodes. As part of each episode, the city attorney would also have a segment to discuss cases and give crime prevention tips. So long as the television program does not urge viewers to vote for the city attorney, does not refer to his or her election campaign, and does not solicit contributions, the payments for the program (and the appearance by the city attorney) will not be considered a contribution to the city attorney.

Joanie Weiser
Friends of Paul Gallegos
Dated: December 17, 2003
File Number I-03-279

Advice on the campaign reporting and record-keeping requirements for the proceeds of a concert fundraiser and discussion of requirements as they pertain to "pass the hat" type of fundraisers is provided.

Casey Gwinn
City of San Diego
Dated: November 17, 2003
File Number I-03-217

An informal advice letter speaks to the general conflict-of-interest rules that apply to members of a city council when they consider amendments to the city's ethics rules governing campaign contributions.

Betty Presley
Mimi Walters for State Assembly
Dated: November 24, 2003
File Number A-03-226

A candidate for the state Assembly is advised

(Continued from page 31)

that she may not amend her Form 501 to change her designation regarding her initial indication that she agreed to abide by voluntary expenditure limits. The letter also advises that a candidate may not amend his or her form to change the designation merely because the candidate asserts the form was filled out in error. (The candidate obtained a writ from the Superior Court permitting the candidate to file the amendment she sought. The matter is now on appeal before the Third District Court of Appeal. A decision is not expected before the General Election.)

Trent J. Benedetti

Sam Blakeslee for Assembly Exploratory Committee

Dated: November 19, 2003

File Number I-03-238

A committee established to support a candidate for state elective office must terminate within 24 months from the date of the election for which the committee was formed, assuming the committee has net debt outstanding. In addition, this letter concludes that the candidate may loan up to \$100,000 to each of his two campaign committees for state elective office.

Jeanne-Marie Rosenmeier

Peter Camejo for Governor

Dated: November 21, 2003

File Number A-03-239

A campaign treasurer of a terminated committee is advised that, limited to the specific facts of her request for advice, either she, as treasurer, a third party, or the defeated candidate could make an in-kind contribution by paying the bank directly the \$15.75 required to obtain copies of checks requested by the Franchise Tax Board's auditor. Because it is an in-kind contribution, it is not necessary to open a campaign bank account or to reopen the committee. The in-kind contribution must be reported on Schedule C of Form 460.

Barbara Aguirre

Chris Mathys, Republican for State Assembly

Dated: November 14, 2003

File Number A-03-243

The proceeds of a loan made to a state candidate by a commercial lending institution for

which the candidate is personally liable, made in the lender's regular course of business on terms available to members of the general public, which the candidate then lends to his or her campaign, do not count toward the \$100,000 loan limit of Government Code § 85307(b).

Mark Wyland

California Assembly

Dated: November 21, 2003

File Number I-03-248

If elected to a third term, section 85316 prohibits a member of the Assembly from raising funds after the election for purposes other than paying net debt. The Act does not provide any specific method for officeholders to raise funds for officeholder expenses. However, officeholder expenses may be paid from any of the Assembly member's committees for Assembly.

James R. Sutton

State Assembly

Dated: November 20, 2003

File Number A-03-253

A candidate for the state Assembly is advised that she may not amend her Form 501, Candidate Statement of Intention, to alter her designation with regard to voluntary expenditure limits. The letter provides an in-depth analysis of the policies underlying the voluntary expenditure limit scheme and the reasons the scheme permits a candidate to change his or her designation in only rare circumstances. (The candidate obtained a writ from the Superior Court permitting the candidate to file the amendment she sought. The matter is now on appeal before the Third District Court of Appeal. A decision is not expected before the General Election.)

Sherry Morton

City of Riverside

Dated: November 21, 2003

File Number I-03-270

A committee controlled by or primarily formed to support or oppose a candidate involved in the January 13, 2004, run-off election in the City of Riverside, may combine the semi-annual statement for the second half of 2003 with the semi-annual statement for the first half of 2004. A filing schedule for this election is also included.

(Continued on page 33)

(Continued from page 32)

Douglas P. Haubert**City of Carson****Dated: October 15, 2003****File Number I-03-212**

Payments made by a defeated candidate, to prosecute an election contest, are reportable campaign expenditures under the Act.

Stephen J. Kaufman**State Treasurer****Dated: October 1, 2003****File Number A-03-220**

The state treasurer is advised that he may make independent expenditures from his 2006 reelection committee to pay for advertisements opposing the recall election and appear in those advertisements.

Julie Ruiz Raber**Carson City Council****Dated: October 16, 2003****File Number I-03-222**

Volunteer personal services provided to a committee by an attorney are not contributions. Therefore, the committee is not required to report them.

Kimberly Smith**City of Cupertino****Dated: September 16, 2003****File Number A-03-177**

Advice to a city that under the Act, the City of Cupertino may display photographs and biographies of candidates for city council on the city web site, even though not all candidates provide photographs or biographies. The letter concludes that all candidates must have the opportunity to participate, but it is not necessary that all candidates take advantage of the opportunity. Other laws outside the Act may apply.

Colleen C. McAndrews**Californians for Schwarzenegger****Dated: September 10, 2003****File Number A-03-197**

Electronic contributor records and other electronic information provided to a campaign committee by Calnet Business Bank meet the recordkeeping requirements of the Act. The bank receives contri-

butions for the committee by credit card and electronic check via the Internet, by credit card via fax, and by mail. Contributions that do not include all of the required contributor information, or that exceed the contributions limits, are not accepted. Contributor information, including images of contribution checks, is provided to the committee on a CD-ROM.

James C. Harrison**Democratic Governors' Association****Dated: September 2, 2003****File Number A-03-201**

The Democratic Governors' Association may make a contribution from its state general purpose committee to Californians Against the Costly Recall of the Governor because the latter is a ballot measure committee. As such, contributions to the ballot measure committee are contributions used for purposes other than making contributions to candidates for elective state office and thus not subject to limitation under section 85303.

Ken West**Lynwood Recall Election****Dated: September 15, 2003****File Number A-03-203**

Funds raised by individuals to pay for signage that informs voters of the date of a local election without mentioning a candidate or ballot measure are not payments for political purposes that would incur reporting obligations.

Lori Jacobs**San Diego Board of Realtors****Dated: September 23, 2003****File Number A-03-208**

A sponsor of a recipient committee may pay expenses for a fundraiser to support the committee without the sponsor qualifying as another recipient committee if the expenses are reported by the committee as nonmonetary contributions, and a responsible officer of the sponsoring organization, in addition to the treasurer of the committee, signs the committee campaign statement. In addition, this letter states that receipts of under \$25 from a single source are noted in the committee's records as a lump sum amount; no additional information on the source of the receipts is required.

(Continued on page 34)

(Continued from page 33)

Conflict of Interest

Chad A. Jacobs
City & County of SF
Dated: December 1, 2003
File Number A-03-126

A supervisor is presumed to have a conflict of interest in a decision that would add his property to the list of properties eligible to participate in the city's Mills Act program. Specifically, exempting the supervisor's property does not change the conclusion.

Damien B. Brower
City of Redwood City
Dated: December 23, 2003
File Number A-03-205

An official may participate in implementation decisions if no material financial effect will result.

Thomas F. Nixon
City of Placentia
Dated: December 18, 2003
File Number A-03-207

A public official sought advice as to whether he is disqualified from participating in city council and redevelopment agency decisions concerning the preparation and approval of a memorandum of understanding between the city and a developer of a proposed transit-oriented development project. The official also sought advice as to whether he is disqualified from participating in decisions concerning the project generally, if he, in his private capacity as a real estate broker/agent, became involved in real estate sales involving property located within 500 feet of the project's boundaries.

The official was advised that it was not reasonably foreseeable that the memorandum of understanding, which covers only the developer's voluntary reimbursement to the city of its cost of processing various licenses and permits, would by itself have a financial effect upon any of the official's economic interests. The official was further advised that since brokers or agents acting in a representative capacity do not have an interest in the real property which is the subject of the real estate transaction in which they are

participating, the distance between the real property and the project's boundaries is immaterial when determining whether a conflict of interest exists. Thus the official does not have a conflict of interest disqualifying him from participating in these decisions.

Richard Stadtherr, Mayor
City of Porterville
Dated: December 23, 2003
File Number A-03-210

A mayor may participate in a decision if the decision will not result in any financial effect on the mayor's employer due to an existing exemption.

Daniel J. McHugh
City of Redlands
Dated: December 5, 2003
File Number I-03-228

A city council member sought advice as to whether he had a conflict of interest disqualifying him from participating in decisions regarding a developer's proposed real estate development when the council member had an outstanding offer to the developer to purchase a parcel of real property located in another area. The council member was advised that since an offer alone did not result in a legally enforceable obligation on the part of the developer to sell, or the council member to purchase, real property, it was not an interest in real property. The three types of interest in real property – option, beneficial interest, ownership interest – were discussed and defined, with examples. Potential conflicts based on personal financial effects and the developer as a source of income or gifts, should the council member acquire a legally enforceable right to acquire the real estate parcel, were also discussed.

Elizabeth Wagner Hull
City of Chula Vista
Dated: December 12, 2003
File Number A-03-232

Three council members own residences and other property in an urban core special plan area. While these properties create a conflict of interest with respect to specific plan decisions, it appears that the "public generally" exception will permit two of the council members to participate in the decision.

(Continued on page 35)

(Continued from page 34)

Rob Phipps
Ceres City Council
Dated: December 9, 2003
File Number A-03-265

The council member was advised that his source of income, a golf course, is directly involved in decisions regarding a fence that may be positioned on the course and for which the golf course may be asked to pay. When a source of income is directly involved in a governmental decision, any financial effect is considered "material." The council member was advised to recuse himself from decisions regarding the fence.

Jonady Hom Sun
CA Public Utilities Commission
Dated: December 19, 2003
File Number I-03-281

A public official sought advice as to whether it is necessary to look beyond a 12-month period in order to conclude whether a particular governmental decision will have a reasonably foreseeable material financial effect. The official was advised that the Commission regulations do not have a "bright line" test which would establish a time beyond which a material financial effect on a source of income would not be reasonably foreseeable. Instead, the determination of what is reasonably foreseeable depends upon the nature of the decision and the totality of the surrounding circumstances.

Jonna A. Ward
CA State Department
December 23, 2003
File Number A-03-282

The Act regulates the conduct of public officials and former public officials. It does not impact a business's ability to bid on a specific contract, nor does it limit participation by employees of the business who are not public employees.

Ronald R. Ball
City of Carlsbad
Dated: December 30, 2003
File Number I-03-286

General guidance on the application of the Act's conflict-of-interest provisions to a city's planning

director whose spouse is employed by a private planning consultancy which represents developers, and appears on their behalf, in connection with their applications before the planning commission and city council.

Peter M. Thorson
City of Mission Viejo
Dated: December 31, 2003
File Number I-03-287

The city council was advised that when it makes an appointment to a joint powers agency from within its own members, that council member who is being considered for the appointment may not participate in the decision. This decision would affect that council member's salary and per diem differently than it would affect the remainder of the council.

Robert B. Ewing
Town of Danville
Dated: December 11, 2003
File Number I-03-291

An official knows that he or she has a financial interest in a decision if the official knows that it is reasonably foreseeable that a decision will materially affect a source of income. As a general rule, an official "has reason to know" that a decision will affect a source of income whenever a reasonable person, under the same circumstances, would be likely to know the identity of the source of income and would be aware of the decision's probable impact on the source. (*Price Advice Letter*, No. A-85-165.) Generally, officials are presumed to know which persons have been sources of income to them.

Kathryn Lyddan
Brentwood Agricultural Land Trust
Dated: November 7, 2003
File Number A-03-182

An agricultural land trust, which encompasses the land in an entire city and a portion of the county, was advised that, because it was formed pursuant to a specific city ordinance to implement the mission of that ordinance, was funded primarily or substantially through governmental funds, performs a function which governmental entities are also authorized and do fulfill, and is treated as a public entity by other statutory provi-

(Continued on page 36)

(Continued from page 35)

sions, the four *Siegel* criteria are fulfilled, and the land trust's board of directors and its executive director are subject to the requirements of the Political Reform Act. The trust was further advised that, because it covers more than one jurisdiction, the county board of supervisors is its code reviewing body, which will determine whether the trust should adopt its own conflict of interest code or be covered by the code of another agency, and whether the executive director and board of directors should file with the agency or the code reviewing body. In addition, a farmer with whom the trust is currently negotiating for a conservation easement, who has paid a member of the board of directors more than \$500 within the last 12 months for consulting and farm work, is a source of income to the board member, and the board member has a conflict of interest and may not participate in any decision regarding the conservation easement.

Mark W. Steres

City of Monterey Park

Dated: November 19, 2003

File Number A-03-221

This reconsideration of the advice provided in the *Steres* Advice Letter No. A-03-155, reaffirms the finding that a council member must disqualify from decisions regarding improvements and modifications of an easement. The council member's source of income retains a property interest in the easement and is therefore, directly involved in the decision.

William H. Wainwright

City of Martinez

Dated: November 4, 2003

File Number A-03-235

When a public official owns a property within 500 feet of the boundaries of property which is the subject of a governmental decision, it is presumed that the decision will have a material financial effect on the official's property. However, this presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the official's property.

Wendy R. Scalise

City of Atascadero

Dated: November 25, 2003

File Number A-03-246

A city council member would have a conflict of interest in decisions by the city council to purchase/guarantee a bond permitting groups of property owners to form assessment districts, which would result in a surcharge on the council member's property tax.

Don Temple

Long Beach Airport Advisory Commission

Dated: November 19, 2003

File Number A-03-262

A public official is a member of the Long Beach Airport Advisory Commission and is disqualified from voting on a recommendation on the environmental impact report because of a foreseeable material financial effect on nearby real property interests.

Bryn C. McLaughlin

Imperial County Local Agency Formation Commission

Dated: October 2, 2003

File Number A-03-086

A member of LAFCO may participate in discussions concerning the reorganization of a water district even though the member has a tenant farmer who may be impacted by the decision.

Charles J. Wright

Alta California Regional Center

Dated: October 14, 2003

File Number I-03-123

A general discussion of the gift and other provisions of the Act with respect to the participation of a legislative staff member on the board of an Alta Regional care center, where the public official's daughter receives services from Alta Regional.

Julie Hayward Biggs

City of Goleta

Dated: October 3, 2003

File Number A-03-166

A council member, elected at-large, who also serves as a member of the redevelopment agency is presumed to have a conflict of interest

(Continued on page 37)

(Continued from page 36)

when her property is located within 500 feet of property which is the subject of a redevelopment decision.

Karl H. Berger
City of Santa Paula
Dated: October 31, 2003
File Number A-03-191

Numerous public officials jointly sought advice as to whether they have conflicts of interest regarding a decision to annex property to their city and if so, whether the "public generally" exception applied. The advice identified the property which is the subject of the decision as the property to be annexed and not existing city property which will be affected by the additional traffic generated by the annexation. The officials were also advised that the "significant segment" prong of the "public generally" exception was satisfied, in light of the number of residential properties affected by the additional traffic, but in the absence of facts describing how the additional traffic will financially affect property values within the significant segment, the second prong of the exception could not be applied.

Heather C. McLaughlin
City of Benicia
Dated: October 1, 2003
File Number A-03-194

It is presumed that the mayor's economic interest will not experience a material financial effect if the mayor's long-term lease is limited to property beyond 500 feet of land which is the subject of the decision. The lease previously included rights to property within 500 feet of the site, but the lease was amended to eliminate this interest.

Arnold M. Alvarez-Glasman
City of Montebello
Dated: October 28, 2003
File Number I-03-214

A mayor had a long-standing friendship with a police officer who filed a discrimination lawsuit against the city. The mayor was advised that friendships do not constitute economic interests. Therefore, absent some other economic interest, no conflict of interest would arise under the Act.

Roger Cochran
Dept. of Pesticide Regulation
Dated: October 21, 2003
File Number A-03-219

The Act's conflict-of-interest rules do not prevent a staff toxicologist from accepting part-time employment by a private sector business entity.

Marguerite P. Battersby
Mission Springs Water Dist.
Dated: October 23, 2003
File Number I-03-227

General guidance on potential conflict of interests that might arise when board members participate in decisions regarding litigation that involves a homeowner's association to which two board members belong.

Yolanda M. Summerhill
City of Whittier
Dated: October 15, 2003
File Number A-03-234

A public official will not have an economic interest in his adult son, merely based on the familial relationship. However, if the adult son is a source of income, then the conflict-of-interest rules could apply. In addition, if the decision affects the official's personal finances by \$250 or more in a 12-month period, he will have a conflict of interest in that decision.

Roy Rodriguez
City of Glendora
Dated: October 31, 2003
File Number I-03-237

The Act does not prohibit an individual from serving on a city water commission. However, that member may have conflicts of interest in decisions that will financially affect his business, which contracts with the city. If he has a conflict of interest in a given decision, he may not make, participate, or influence that decision.

Nancy Kierstyn Schreiner
City of Thousand Oaks
Dated: October 31, 2003
File Number A-03-242

A planning commissioner does not have a conflict of interest with respect to decisions regarding a private school's land use entitlement appli-

(Continued on page 38)

(Continued from page 37)

cation, even if her child is a student at the school. However, if the decision were to affect the commissioner's personal finances (such as tuition or fees she must pay) by \$250 or more in a 12-month period, she will have a conflict of interest in that decision.

Jennifer McGrath
City of Huntington Beach
Dated: September 26, 2003
File Number I-03-042

A public official's volunteer activity did not create an economic interest in the organizations for which he volunteered. Reimbursement of travel expenses by his former union made the union a source of income to the official, but since the income was received more than 12 months ago, it was not an economic interest under the Act. Certain categories of income did not qualify as "sources of income" under the Act, as they fell within the pension and governmental salary exceptions. The official had other economic interests. However, as no pending governmental decisions were identified, no conflict of interest determinations could be made.

Robert B. Ewing
City of Danville
Dated: September 24, 2003
File Number A-03-116

Examination of whether a public official has an economic interest due to a client's interest in a partnership that is a source of income to the public official. A factual analysis was provided under *In re Nord* (1983) 8 FPPC Ops. 6 and regulation 18703.2(d)(1) and (2).

James Benjamin
Half Moon Bay Planning Commission
Dated: September 2, 2003
File Number I-03-122

A general discussion of possible conflicts of interest arising out of various economic interests held by six planning commissioners about to undertake a comprehensive review and update of a city's general plan and related planning guidelines.

Janet C. Crocker
Newark Unified School District
Dated: September 23, 2003
File Number I-03-137

This is a general discussion of conflict-of-interest rules as they pertain to a candidate for a school board district whose husband works for a school in the district. The Act does not prohibit the official from holding office under such circumstances. However, under certain circumstances that official may be required to abstain from decisions that materially affect her spouse.

Dean Derleth
City of Colton
Dated: September 16, 2003
File Number A-03-148

Advice was sought on behalf of nine public officials as to whether they may participate in decisions concerning adoption or amendment of a proposed redevelopment plan, when the officials owned real property or had business interests located within the redevelopment area. The advice concluded that seven of the officials have a disqualifying conflict of interest based on their economic interest in their principal residence. Although the "significant segment" prong of the "public generally" exception was met with respect to these officials' principal residences, there were no facts showing that they will be affected in substantially the same manner as the significant segment. Thus, the "public generally" exception could not be applied. However, the special form of the "public generally" exception, regulation 18707.9, applied to several of these officials. The advice concluded with a brief discussion of segmentation and referenced the newly adopted regulation 18709.

Victor Prussack
Nevada City
Dated: September 15, 2003
File Number A-03-169

A planning commissioner is instructed on when he can rely on an appraisal of the financial effect on his real property to rebut the presumption that any financial effect is material. The appraisal must be done by a disinterested and otherwise qualified real estate professional, based on an accurate understanding of all pertinent facts and cir-

(Continued on page 39)

(Continued from page 38)

cumstances, including those listed as factors in regulation 18705.2(b)(1)(A)-(C), to be considered a good faith effort by the public official to assess the financial effect of a decision on his real property. All of these factors must be met to rebut the presumption of a material financial effect.

James P. Mayer
Little Hoover Commission
Dated: September 12, 2003
File Number I-03-171

General advice on the application of the conflict-of-interest laws to consultants for the Little Hoover Commission.

James C. Sanchez
City of Fresno
Dated: September 17, 2003
File Number I-03-173

The owner/proprietor of a private planning/development consulting business would be a "consultant" within the mean of the Act (and therefore, a public official) if retained to draft a specific plan and shepherd it through the approval process.

Sharon D. Stuart
City of Lompoc
Dated: September 16, 2003
File Number A-03-176

A general application of the 500-foot rule applicable to a public official's interest in real property. One official owns property within 500 feet of the subject property, and the remaining officials own property beyond 500 feet. An official who owns property exactly 500 feet from a subject property is "within 500 feet" as contemplated by the Act.

Kevin G. Ennis
LA Care Health Plan
Dated: September 15, 2003
File Number A-03-180

A public official appointed to a county public health agency, who is also the chief executive officer of a trade association of county health clinics, sought advice on participating in various agency decisions concerning free and community clinics located within the county. Free and community clinics that are members of the trade asso-

ciation pay dues fixed according to the clinic's operating expenses. The official was advised that she will not have a conflict of interest prohibiting her involvement in an agency decision that will not affect the operating expenses of the county's free and community clinics. For purposes of applying the "public generally" exception, the relevant significant segment of the "public generally" exception includes all free and community clinics located within the county, not just those clinics that are members of the county trade association for which the official is an officer. The advice includes a discussion of the "nexus test" and what financial impacts may be considered reasonably foreseeable under the standards articulated in *In re Thorner* (1975) 1 FPPC Ops. 198.

Ray A. Hanley
City of Atascadero
Dated: September 22, 2003
File Number A-03-196

A city council member is advised that he will not have a conflict of interest when making or participating in decisions regarding the location of the city's homeless shelter. Because the city council member's real property interest is located further than 500 feet from any proposed location for the shelter, there appears to be no reasonably foreseeable financial effect on the property.

Tony Roberts
County of Yuba
Dated: September 23, 2003
File Number I-03-199

A general discussion of the conflict-of-interest rules of the Act as they apply to a county employee who is seeking a seat on the county board of supervisors. The Act does not prohibit an official from holding multiple public positions.

Conflict of Interest Code

Teresa Vig Rein
Stanislaus Economic Development Workforce Alliance
Dated: December 12, 2003
File Number I-03-266

General advice regarding an agency's newly drafted conflict of interest code, specifically insert-

(Continued on page 40)

(Continued from page 39)

ing language regarding the filing of “consultants,” as defined under the Act.

Lisa Kranitz
The Center for Water Education
Dated: November 6, 2003
File Number A-03-204

A nonprofit is determined to be a “local government agency.” This conclusion was formed through the application of the factors found in the Commission opinion, *In re Siegel* (1977) 3 FPPC Ops. 62. These factors include determining the impetus for formation, from where the funding derives, if the nonprofit performed a service traditionally performed by a public agency, and how the nonprofit is treated by other statutory provisions.

Alix A. Rosenthal
Dougherty Regional Fire Authority
Dated: November 26, 2003
File Number A-03-257

The requestor sought advice regarding the steps that should be taken to cancel her agency’s conflict of interest code once the agency ceases existence. In addition, an exemption was sought under regulation 18751 to permit the agency to suspend or terminate its existing conflict of interest code. The requestor was advised that once the agency ceases to exist, it may cancel its conflict of interest code effective as of the date of dissolution with no prior approval of the Commission, as its code reviewing body, required. A letter indicating the dissolution of the agency and the date of cancellation of its code is to be sent to the Commission, as its code reviewing body. No advice was given with respect to the exemption request since the Commission’s Executive Director, in a concurrent letter, denied the exemption request, noting that regulation 18751 is applicable only to agencies that have not yet placed a conflict of interest code into effect.

Alan R. Watts
Power Agency of CA
Dated: November 26, 2003
File Number A-03-258

An agency claimed that it had become inoperable and nonfunctioning and requested whether it may suspend its filing of biennial reports concerning its

conflict of interest code, and whether designated employees may cease filing statements of economic interests. In addition, the agency sought advice on how it may terminate its conflict of interest code, once the agency ceased to exist. The requestor was advised that as long as the agency continued in existence, even if inoperable and nonfunctioning, the filing obligations imposed by the Act upon agencies with an effective conflict of interest code remain in effect. When the agency ceases to exist, it may cancel its conflict of interest code as of the date of its dissolution. A letter indicating this should be provided to the Commission, as the agency’s code reviewing body. A separate letter from the Commission’s Executive Director was issued, denying the agency’s request for relief as claimed under regulation 18751. The Executive Director’s letter concluded that the exemption under regulation 18751 is not potentially available to agencies once they have a conflict of interest code in effect.

Denise W. Lewis
Department of Corrections
Dated: October 9, 2003
File Number I-03-115

In general, physicians making medical treatment decisions do not make, participate in making, or use their official positions to influence a governmental decision. However, if a particular member of the management, board or staff of a medical facility in a community near a California Department of Corrections institution, who treats an inmate pursuant to a contract with the Department of Corrections, is serving in a staff capacity under regulation 18701(a)(2)(B), thus qualifying as a “consultant” under the Act, he or she would be required to comply with the disclosure provisions of the Act by filing a statement of economic interests.

Stephen P. Deitsch
City of Arcadia
Dated: September 22, 2003
File Number A-03-202

The City of Arcadia was told that its homeowner association review boards are not solely advisory and are subject to the Act’s conflict-of-interest disclosure and disqualification provisions.

(Continued on page 41)

(Continued from page 40)

Gifts

William D. McMinn

Port of San Diego

Dated: December 12, 2003

File Number I-03-284

Meals purchased at restaurants for port commissioners are gifts, unless a specific exception applies. Since the commissioners have full disclosure under the agency's conflict of interest code, the meals are considered gifts even if the source of the gift does not have business before the Port of San Diego or even if the gift is provided outside the Port of San Diego's jurisdiction.

Honoraria

Jonady Hom Sun

Public Utilities Commission

Dated: December 16, 2003

File Number A-03-142

The travel of a commissioner for the Public Utilities Commission to Puerto Rico to speak at a utility workers' conference is considered "travel within the United States" under regulation 18950.1(a)(2), which exempts certain reimbursements of travel expenses from the Act's "gift" and "honoraria" prohibitions.

William Fulton

City of San Buenaventura

Dated: December 4, 2003

File Number A-03-278

If payments for instruction, speaking, and writing are received by an official in connection with the practice of a bona fide business, trade, or profession, the payments would not be prohibited.

Lobbying

Mark Greenberg

Pomona Valley Hospital

Medical Center

Dated: December 30, 2003

File Number A-03-289

A member of an organization will not qualify as a lobbyist employer or a \$5,000 filer by making regular dues or similar payments for membership

in a bona fide association, even if a portion of the dues or similar payments is used by the association to employ a lobbyist or make other payments to influence legislative or administrative action.

Mike Laidlaw

Government Strategies, Inc.

Dated: October 2, 2003

File Number A-03-206

A California registered lobbyist may make a contribution to the "Taxpayers Against the Governor's Recall" campaign since the committee is not controlled by an elected state officer or candidate.

Nola Werren

Research & Compliance Services

Dated: September 4, 2003

File Number A-03-188

Any lobbyist who registers for one legislative session, and was previously registered for a prior legislative session, is renewing his or her registration, not submitting a new registration.

Mass Mailing

Susan M. Schectman

Midpeninsula Regional Open Space District

Dated: November 5, 2003

File Number I-03-233

A book produced at public expense would be subject to the Act's mass mailing restrictions if the publisher and agency together distributed more than 200 copies within a calendar month by "mailing" those copies to the homes, places of business, or post office boxes of the purchasers.

Revolving Door

Kathy Lewis

Department of Education

Dated: December 5, 2003

File Number A-03-209

An employee of the Department of Education (DOE), soon to retire, sought advice as to whether she, as a contractor to a group of foundations, may be posted by this group to: 1) occupy a staff position with the Department of So-

(Continued on page 42)

(Continued from page 41)

cial Services (DSS) which DSS has contracted out to the group; and 2) be assigned to an inter-agency task force to promote the involvement of DOE and other state agencies in a child welfare services system. The employee was advised that even though she is receiving compensation from DSS, since that compensation is for vacation time accrued while an employee of DOE and she has not performed any services for DSS over the 12-month period prior to separation from state service, DSS is not her former state agency employer and she is not prohibited by the one-year ban from communicating with or appearing before DSS. The employee was also advised that the permanent ban would not prohibit her from appearing in or representing DSS with respect to any judicial, quasi-judicial or other proceeding in which she personally and substantially participated while an employee of DOE, since the permanent ban does not apply when representing the State of California or any of its agencies. Finally, the employee was advised that neither the one-year or permanent bans would prohibit her from providing voluntary services as a board member of an entity which is a contractor with her former state agency employer. These bans only apply to appearances and communications for which a former employee receives compensation.

Gary Quiring
Department of Education
Dated: December 9, 2003
File Number A-03-272

A designated state employee will be subject to the permanent ban on "switching sides" in a proceeding if he takes outside employment servicing a contract which he monitored while in state employment. The letter also contains a general discussion regarding the prohibitions imposed by the one-year ban on a public official's appearance before the state agency that previously employed him.

The Honorable Roger D. Randall, Retired
San Luis Obispo Superior Court
Dated: December 4, 2003
File Number A-03-261

A judge who is retiring in December 2003, but expects to serve at least 30 days during 2004 by assignment, is advised to continue to file annual statements of economic interests.

Jonna A. Ward
Dept of General Services
December 22, 2003
File Number A-03-283

The Act regulates the conduct of public officials and former public officials. It does not restrict a business's ability to bid on a specific contract. However, the permanent ban prohibits a former state employee ("consultant") from being paid to act as an agent or attorney for or otherwise represent the business in the procurement process. The permanent ban does not apply to a "new" proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official previously participated. Generally, proceedings to draft a contract are different from proceedings involving *implementation* of the same contract, or amendment to the plan or agreement. Thus, once awarded, the permanent ban prohibition would not apply if the implementation is a new proceeding. However, the one-year ban may still apply.

Dennis G. Boom
Franchise Tax Board
Dated: November 17, 2003
File Number I-03-157

A former employee of the Franchise Tax Board was advised that the one-year ban does not prohibit him from immediately making software sales, or offering technical or management services, to state agencies other than the FTB; however, the permanent ban would prohibit him from doing so if he would be representing any person, other than the State of California, in a proceeding in which he formerly participated while in state service. The former official was also advised that the post-employment provisions of the Act do not bar his acceptance of employment with a private company doing business with the state, provided that he does not appear or communicate with the FTB for one year (except to fulfill the terms of an existing contract) and, pursuant to the permanent ban, does not accept assignments which would involve him in proceedings in which he formerly participated while in state service.

(Continued on page 43)

(Continued from page 42)

Thomas A. Willis
CA Public Utility Commission

Dated: November 7, 2003

File Number A-03-198

A former legal advisor to the California Public Utility Commission (CPUC) sought advice as to whether the one-year prohibition under the Act's post-employment provisions barred her from representing her new employer in proceedings before the CPUC's administrative law judges. The former official was advised that the one-year ban in section 87406 explicitly excludes appearances before an administrative law judge from the definition of prohibited "appearances." Thus, she was advised that she may represent her new employer in proceedings before the CPUC's administrative law judges.

Kerry Mazzoni
Office of the Secretary for Education

Dated: November 14, 2003

File Number A-03-250

A discussion of the "revolving door" rules of the Act as they apply to a member of the Governor's cabinet. If the former officer's new employer is the State of California, including a University of California campus, the officer will not be subject to the revolving door rules of the Act in representing the state.

Robert A. Laurie
CA Energy Commission

Dated: October 15, 2003

File Number A-03-190

Because a former member of the California Energy Commission exercised discretion in granting petitions to intervene in proceedings involving an application for certification of a thermal power plant prior to his resignation from the commission, he took part personally and substantially through decision, as that phrase is used in Government Code § 87400(d), and "participated" in the proceeding for purposes of the Act. Therefore, he could not represent the applicant before the California Energy Commission for compensation, and may not provide any consultation, advice or assistance to the applicant in connection with its application for certification.

Richard L. Friedman
Department of Housing & Community Development

Dated: October 30, 2003

File Number A-03-216

The revolving door provisions apply to individuals, not business entities. A former designated employee is prohibited under the one-year ban from appearing before or communicating with his former department. However, provided he does not violate the one-year ban, he is not prohibited from participating in a new proceeding of the project on which he previously worked.

Statement of Economic Interests

Supervisor Pat Paul
Stanislaus County
Dated: October 21, 2003

File Number I-03-218

This county official was advised how to amend her prior year's annual statement of economic interests to report a gift of travel received during the year.

